

STATE OF MICHIGAN
COURT OF APPEALS

SANDRA CASPER,

Plaintiff-Appellee,

v

GENERAL MEDICINE, P.C.,

Defendant-Appellant.

UNPUBLISHED

June 30, 2005

No. 253474

Wayne Circuit Court

LC No. 03-318239-CL

Before: Gage, P.J., and Whitbeck, C.J., and Saad, J.

PER CURIAM.

Defendant, General Medicine, P.C., appeals the trial court's order that denied its motion to dismiss plaintiff, Sandra Casper's Complaint. Instead, the trial court dismissed the Complaint without prejudice to allow the parties to facilitate Casper's claims, but at General Medicine's sole expense. We affirm in part and vacate in part.

I. Facts and Procedural History

In November 2002, Casper and General Medicine entered into an employment contract for Casper to serve as General Medicine's Marketing Director. The contract provided, in section 5.4:

Employer may, without cause, terminate this Agreement at any time by giving ninety (90) days prior notice to Employee. In that event, Employer shall pay Employee his/her compensation up to the date of termination. Employee shall not be entitled to any other severance payment.

On March 10, 2003, General Medicine notified Casper in writing that it was giving her ninety days notice of termination without cause under section 5.4. The parties agree that §5.4 means that Casper's termination would occur on June 8, 2003, ninety days after the date of notice.

On March 14, 2003, Casper sent an email in which she stated that she did not intend to participate in a work-related conference, that she would be on vacation, and that her "name should no longer be associated with General Medicine." In response, General Medicine terminated Casper's employment under another contract provision, section 5.1, that provides for immediate termination for cause for, among other things, an employee's failure to perform her duties and responsibilities under the contract. General Medicine interpreted Casper's email to

indicate that she did not intend to work during the ninety-day notice period and, therefore, the company did not compensate Casper for those ninety days.

The contract required that the parties submit to non-binding facilitation any material dispute before either party commenced litigation. The contract also specified that the parties would share costs of facilitation equally. Instead of using the facilitation process outlined in the contract, Casper filed her contract Complaint in Wayne Circuit Court.¹ General Medicine moved to dismiss the Complaint and asked the trial court to compel facilitation under the terms of the contract. General Medicine argued in the alternative that, for Casper to receive compensation, the contract unambiguously required her to work during the ninety-day notice of termination period. Casper contended that the unambiguous language of the contract provided for absolute payment by General Medicine under section 5.4. Casper also maintained that the cost-splitting requirement in the facilitation provision is invalid because it is unfair and overly burdensome.

The trial court denied General Medicine's motion to dismiss and ruled that the contract is ambiguous regarding whether Casper must work during the ninety-day notice period as a condition of payment. The trial court also ruled that there is a question of fact regarding whether Casper provided any services to General Medicine during that ninety-day period. Further, the court held that, based on its reading of *Rembert v Ryan's Steakhouse*, 235 Mich App 118; 596 NW2d 208 (1999),² the cost sharing provision of the facilitation clause is invalid. Pursuant to the contract's severability clause, the trial court struck the cost-splitting language and dismissed Casper's Complaint without prejudice to allow facilitation to take place at General Medicine's sole expense.

II. Analysis

Defendant challenges the trial court's ruling that the contract is ambiguous regarding whether Casper must continue to work during the ninety-day notice period and it further contends that the trial court erred by ruling that the cost-sharing provision for facilitation is invalid as a matter of law. However, we hold that it was premature for the trial court to decide these material contract disputes because the agreement unequivocally provides that the parties must submit their claims to facilitation prior to filing an action in court. Neither party contends that the trial court erred by ultimately dismissing the case under the contract's facilitation provision and, under the plain terms of the agreement, all material claims arising out of the contract must first be facilitated. The provision that controls our decision states:

The parties agree that in the event a material dispute arises under this Agreement other than a breach by the Employee of the terms of Section 7 or 8

¹ This case was filed in Wayne Circuit Court despite the parties' agreement that any litigation would be filed in Oakland Circuit Court under section 10.3.

² The trial court also relied on and *Cole v Burns Int'l Security Services*, 105 F3d 1465 (CA DC, 1997), which the Court of Appeals discussed in *Rembert*.

neither party will commence litigation before first submitting such dispute to non-binding facilitation

When the contract dispute arose, Casper apparently acknowledged the facilitation clause and agreed to submit to the dispute resolution procedure outlined in the agreement.³ However, instead of following through with the facilitation, and notwithstanding the choice of forum clause that designated Oakland County as the proper filing place, Casper, a resident of South Carolina, filed her Complaint in Wayne Circuit Court.

“ ‘The general rule [of contracts] is that competent persons shall have the utmost liberty of contracting and that their agreements voluntarily and fairly made shall be held valid and enforced in the courts.’ ” *Terrien v Zwit*, 467 Mich 56, 71; 648 NW2d 602 (2002), quoting *Twin City Pipe Line Co v Harding Glass Co*, 283 US 353, 356; 51 S Ct 476, 75 L Ed 1112 (1931). As our Supreme Court further explained in *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 52; 664 NW2d 776 (2003):

The notion, that free men and women may reach agreements regarding their affairs without government interference and that courts will enforce those agreements, is ancient and irrefutable. It draws strength from common-law roots and can be seen in our fundamental charter, the United States Constitution, where government is forbidden from impairing the contracts of citizens, art. I, § 10, cl. 1. Our own state constitutions over the years of statehood have similarly echoed this limitation on government power. It is, in short, an unmistakable and ineradicable part of the legal fabric of our society.

Moreover, our courts favor contracts between private parties with terms that provide for alternate dispute resolution. *Whispering Pines AFC, Home, Inc v Dep’t of Treasury*, 212 Mich App 545, 550; 538 NW2d 452 (1995). In *E E Tripp Excavating Contractor, Inc v Jackson County*, 60 Mich App 221, 246-247; 230 NW2d 556 (1975), this Court observed:

The heavily case-loaded courts are no longer jealous of their jurisdiction. Where the parties, by a fair agreement, have adopted a speedy and inexpensive means by which to have their disagreements adjusted, we see no public policy reasons for the courts to stand in their way.

We are bound here by these well-established principles and repeat them here: Where private parties enter an agreement that clearly provides, as a condition precedent to filing suit, that the parties make good faith efforts to settle their claims by submitting them to facilitation, the trial court may not prematurely consider and decide claims arising out of the contract dispute. Here, only after pursuing the speedy and less expensive means to resolve the dispute are the parties contractually permitted to file an action in Oakland Circuit Court. Because there is no public

³ At oral argument, the parties acknowledged that facilitation was commenced by plaintiff, but then abandoned.

policy prohibition against the enforcement of an unequivocal facilitation agreement, we must honor the provisions of the parties' contract as written.

Accordingly, we vacate the trial court's ruling on the question whether the contract required Casper to work during the notice period and its ruling that the cost-sharing provision is unenforceable as a matter of law. We affirm the trial court's dismissal of the case so that the parties may facilitate their claims as they agreed to under their contract.

/s/ Hilda R. Gage

/s/ William C. Whitbeck

/s/ Henry William Saad